



DIRK KEMPTHORNE  
GOVERNOR

September 9, 2002

VIA FACSIMILE AND U.S. MAIL

The Honorable Christine Todd Whitman  
Administrator  
United States Environmental Protection Agency  
Ariel Rios Federal Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

**Re: Letter of Concurrence**

**Record of Decision (Bunker Hill Mining and Metallurgical Complex  
Operable Unit 3 (OU 3))**

Dear Governor Whitman:

We are greatly appreciative of your recent visit to Northern Idaho to see first-hand two of our Nation's most treasured and important resources, Lake Coeur d'Alene and the Silver Valley mining district.

We wholeheartedly support your public comments affirming what we already know and what science has told us, namely that Lake Coeur d'Alene is "drinkable, fishable, and swimmable" and that the Lake does not warrant treatment under the federal Superfund law. Indeed, we toasted the occasion of your formally joining the Basin Environmental Improvement Project Commission (Basin Commission) by drinking water taken straight from Lake Coeur d'Alene.

This letter serves as the formal response of the State of Idaho to the Record of Decision (ROD) on the Selected Remedy for Operable Unit 3 (OU 3) of the Bunker Hill Mining and Metallurgical Complex (Selected Remedy), the August 28, 2002 version. As will be described below, the State of Idaho generally concurs with the ROD, but does so with express conditions.

## **I. INTRODUCTION**

In November of 2001, and before John Iani assumed his role as Region 10 Administrator at the United States Environmental Protection Agency (USEPA), I publicly declared that I was so frustrated by the lack of progress on the Coeur d'Alene Basin cleanup by the USEPA that I was ready to ask the agency to step aside and leave Idaho. At the time, the agency's draft Proposed Plan was totally void of common sense and would have crippled the economy of Northern Idaho. My feelings were also intensely shared by our congressional delegation.

However, I also stated that Idaho would be willing to collaborate on a plan grounded in reality and that if USEPA accepted our offer to work together, we had the potential to form a willing partnership in this important process. I know from my meetings with Northern Idahoans that up to that point, our message was not getting through.

In the months that followed, USEPA undertook a good faith effort to collaborate with the State of Idaho and accommodate many of our concerns with the Selected Remedy. I attribute this progress to your experience as a former Governor that no state appreciates a heavy-handed federal government. Indeed, your signature (as well as that of the Regional Administrator) on the Basin Commission agreement is evidence of your continued commitment to work with Idaho and the other local interests on these issues. I commend you and your Regional Administrator for finally recognizing and acknowledging the importance of Idaho's point of view and critical stake in this process.

The Selected Remedy has evolved markedly from the draft \$1.3 billion Proposed Plan released in late 2001. The ROD now outlines a program similar to the state plan released in July 2000, in that it limits work to specific cleanup actions to be completed over a thirty-year period and selectively focuses the remediation activity on "hot spots" and cost-effective actions. Our specific points of agreement are set forth below.

We realize that the final ROD represents USEPA's best understanding of its obligations under federal law to protect human health and the environment. However, from Idaho's perspective, the Selected Remedy contained in the ROD is not the perfect answer to a limited problem.

Even after the intense discussions of the past months, we remain astonished by this breathtaking application of the Superfund law and continue to doubt the science that has driven some of the final aggressive choices made, for example, in the Upper Silver Valley. Idaho looks forward to the day - and soon we hope - when USEPA will finally decide that Superfund-driven decision making in the Coeur d'Alene Basin is obsolete. For many of the actions described in the ROD, we already know that this is the case.

While we will never agree on some important points, we also know that once we put the final ROD behind us, we have set the stage for a new era of sensible and cost-effective cleanup of certain targeted areas in the Silver Valley and that the work of the Basin Commission can begin in earnest. This is an important goal which cannot be lost in what at times has been a furious debate over the impact of Superfund on the daily lives of the good people of Northern Idaho.

In its current configuration, we generally concur with the Selected Remedy and agree with a significant portion of the final ROD. However, as will also be set forth below, Idaho has serious concerns regarding several key provisions of the Selected Remedy as set forth in the ROD.

## **II. DISCUSSION**

### **A. Points of Agreement with the Selected Remedy**

#### **1. No Superfund Treatment and No Remediation Activity for Lake Coeur d'Alene**

The Selected Remedy calls for no Superfund treatment of Lake Coeur d'Alene. The position by USEPA is appropriate under Superfund because the Lake presently meets federal government water quality criteria guidance for human consumption and Lake water quality is expected to improve for the duration of the Selected Remedy. Again, we reaffirm your public comments that the Lake Coeur d'Alene water is “drinkable, fishable, and swimmable.”

The ROD specifically provides that Lake Coeur d'Alene will be managed outside of Superfund under the locally prepared and implemented Lake Management Plan. Idaho will focus its efforts on finalizing amendments to the Plan and moving ahead with its implementation as soon as is practicable.

#### **2. The Basin Commission**

The support for the Basin Commission in the ROD represents an unprecedented approach under Superfund, and I look forward to working with John Iani as the federal representative to the Basin Commission.

This approach will give local government a critical role in working with the federal government, State of Idaho, Coeur d'Alene Tribe, and State of Washington in designing, scheduling and contracting the work proposed to implement the Selected Remedy. Moreover, the Selected Remedy appropriately limits actions to work areas and provides certainty by limiting the scope of the projects.

An additional function of the Commission is that it will become the vehicle by which a specific remedial action can be assessed for performance and updated as advances in science become more apparent. Finally, the Commission includes representation by the State of Washington, which is an important regional partner in this effort.

#### **3. Innovative Technologies**

Idaho supports the continued development and implementation of innovative treatment technologies, such as were initiated by the Silver Valley Natural Resource Trustees, rather than physical removals to accomplish water quality improvements and reduce

bioavailability of contaminants. Specific examples include phosphate amendments to soil to reduce bioavailability and passive treatment reaction barriers.

We also support the adaptive approach outlined in the ROD to take advantage of new information and technologies.

#### **4. Funding for Infrastructure Improvements to Protect Remedy**

The ROD appropriately acknowledges that the budget for drainage improvements, potential recontamination and sewer infiltration and inflow (I&I) will be spent on construction and maintenance of permanent, as opposed to temporary, measures.

#### **B. Points of Disagreement with the Selected Remedy**

Idaho has grave concerns about several items, and conditions our concurrence on the following comments:

##### **1. Portrayal of Lake Coeur d'Alene as a CERCLA or Superfund "Facility" or "Site"**

The State understands that contaminants from the originally designated CERCLA (Superfund) "facility" historically came to rest in Lake Coeur d'Alene. We are also committed to Superfund-driven work on "hot spots" being conducted outside the 21 square mile area known as the "Box." Our view is that the Selected Remedy, in order to be effective, must also be limited and efficient.

Idaho is opposed, however, to *any* identification of the lake as part of a "Superfund site" and will pursue administrative actions to make clear that the Lake is not presently nor in the future *ever* identified as part of a "CERCLA site."

We have similar concerns about including the Idaho portion of the Spokane River where no remedial actions are identified. We believe the Lake Management Plan process for the Lake and state and local management mechanisms for the Idaho portion of the Spokane River will provide the appropriate level of protection to maintain water quality.

The ROD contains no geographic depictions of Lake Coeur d'Alene as being within the physical confines of a Superfund site. As a side note, Figure 7.2- 4 and the text on page 7-18 (describing Conceptual Site Model (CSM) Unit 4) may make it appear to some that the Lake is a part of the Superfund cleanup action. This figure and text show that the Lake was part of the original study area only, not part of the Superfund cleanup actions. Issues associated with any Lake contamination will be addressed by the Lake Management Plan.

##### **2. The Duration of the Selected Remedy**

The State hopes that the Superfund process in Idaho will terminate at some point in the near future, and certainly within (if not before) the time frame proscribed in the Selected Remedy.

In that context, it is not reasonable to speculate in the ROD about the cleanup work needed after implementation of the Selected Remedy. Prediction of the environmental situation thirty years in the future is impossible given the unknowns about the effectiveness of remedial actions and natural attenuation.

The State believes that implementation of the Selected Remedy will provide the health and environmental improvement needed for the Basin.

### **3. Human Health Related Actions**

We appreciate that the ROD determines that the human health related actions in the Selected Remedy constitute the final remedy for the Basin's populated areas.

However, while there is no health emergency of any kind in the Basin, there are prudent measures to take to assure that individuals are not exposed to contaminants. We believe the program that the state has outlined for the human health remedy will also ease property owner and parental concerns and fulfill disclosure requirements for real estate transfers. We will only support *voluntary* actions in this program.

### **4. The Sediment Removal Activities**

We remain concerned that removal actions be accomplished in a manner that does not contribute to additional contamination or disrupt existing viable ecosystems. We will work with USEPA, through the Basin Commission structure, to plan and schedule actions to assure that goal. We must also ensure that the actions take place in a way that contributes to the stability and enhancement of the economic base of the upper and lower Basin.

We understand that in the ROD, USEPA has indicated its intention to potentially increase the amount of sediment removals in the Basin. We will only support this additional work if we are convinced that such removals are the most effective way to meet the objectives of the ROD. The State Superfund Contract that Idaho may eventually sign will *not* cover funding for these actions unless and until we are in agreement with the need for increased removals.

### **5. The Sequencing of the Proposed Actions**

Our support for the Selected Remedy is conditioned upon our understanding that its implementation will not slow the rapid completion of the Phase I and Phase II actions in the "Box" and delay subsequent deletion from the National Priorities List (NPL) of remediated areas.

### **6. Chronic Criterion for Cadmium**

Finally, Idaho does not believe that USEPA's 2001 chronic criterion for the cadmium is relevant and appropriate or that it is a requirement for the upper Basin.

### III. CONCLUSION

The issuing of the final ROD is just the first step in a long process. In the years ahead, we look forward to working with USEPA in achieving and maintaining a healthy and productive environment while protecting the economy of the Basin.

Sincerely,

A handwritten signature in black ink, appearing to read "Dirk Kempthorne". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

DIRK KEMPTHORNE  
Governor

DK:lmb

cc: John Iani, USEPA  
Steve Allred, DEQ